1941. K **File No.** B. Abk. /41

Legal **DEPARTMENT**

B. **BRANCH**

Subject:—

Governors' Bill no. XIV of 1941

A Bill to amend the Bombay Abkari Act, 1878.

(amendt. of s.s. 4, 6, 19A and 25 and insertion of new s.s. 8 A, 60 A and 64 A.)

P32

Bom. XV of 1941

(2nd Amendt.)

File No. B. Abkari/41.

Std. Sectt. Slip 24 B e.

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A revised draft Bill amended in the light of the remarks of the Commissioner of Excise in his D. O. letter dated the 19th May 1941(copy attached) and of the Advocate General in his note dated the 21st May 1941(copy attached) is sent herewith.

2. Para 1 of the letter of the commissioner of Excise (page 225 post) and para 7 of the Advocate General's note(page 231 post)- (a) Clause 8 ofthe revised draft Bill provides for giving retrospective effect to the provisions ofthe clause. This would validate the orders so far issued by Government. It would also prevent the institution of fresh suits against Government.

(b) The Advocate General is of the opinion that it would not on general principles be desirable to give retrospective effect to the provisions of this clause so as to affect in any manner the rights of the plaintiffs in the pending suits filed against Government claiming damages for alleged wrongful refusal to renew or issue licenses. I agree with this view of the Advocate General. The Advocate General is also of the opinion that the language of clause 8 is not such as would affect the pending suits. To make the position quite clear, a new clause on the lines of clause 9 in the draft Bill may be added to the Bill providing that nothing in this amending Act shall affect any suit or proceeding instituted before the date of coming into force of the Act.

3. Para 2 of the letter of the Commissioner of Excise- As suggested by the Commissioner, the new section in clause 8 of the draft Bill has been numbered as section 64A.

4. Para. 3 of the letter of the Commissioner of Excise Pages 225-226 post) A new sub-clause(f) has been inserted in section 64A in clause 8 of the draft Bill on the lines suggested by the Commissioner and the existing clauses(f) to (j) have been renumbered as Clauses(g) to (K) respectively.

5. Para 4 of the letter ofthe Commissioner of Excise (p. 226 post) The minor mistakes pointed out by the Commissioner have been corrected.

6. Para. 5 of the letter of the Commissioner (p. 226 post) As this will be a governor's Act, there will be no Statement of Objects and Reasons attached to the Bill. The expression "purposes hereinafter appearing" means the purposes appearing in the Bill itself. This is the usual phraseology used in such Acts.

7. Para. 1 ofthe note of the Advocate General (p 229 post, The Advocate General suggests that in section 4 the words "subject to the control and direction of the Commissioner and the orders of the Provincial Government" should be deleted, and the words "in the manner and subject to the restrictions hereinafter provided" should be added at the end. Under section 4, the collectors are charged "with carrying out the provisions of Act." These provisions can only be carried out subject to the restrictions contained in the Act. It is therefore not necessary to refer to them in section 4. The object of amending section 4 of the Act is to provide that the Collector shall exercise his powers under the Act subject to such orders as the Provincial Government or the Commissioner may make. section4, therefore, may be amended by substituting the words "subject to such orders as the Provincial Government or the Commissioner may make from time to time under section 8A" for the words "subject to the control... Provincial Government." Clause 2 of the revised draft Bill provides accordingly.

8. Para. 2 of the Advocate General's note(229 post) The minor mistake pointed out by the Advocate General hasbeen corrected.

9. Para 3 of the Advocate General's note (p.229 post)

The suggestion ofthe Advocate General may be accepted. The words "not inconsnistent with the provisions of the Act." are not necessary and have been deleted from section 8A in clause 4 of the revised draft Bill.

10. Para. 5 of the Advocate general's note:- It is presumed that the intention is to restrict the operation ofthe provisions of clause 8 to licenses only and that it is not intended to apply them to permits and passes. The question raised by the Advocate General is for R. D. to consider from the administrative point of view.

11. Para. 6 ofthe note of the Advocate General(page231) As section 64A in clause 64A in clause 8 stands at present its operation is restricted to licenses. The clause does not affect import, export or possession. No licenses are granted for export, import or possession. The proviso suggested by the Advocate General is therefore not necessary. It would be necessary only if the scope of the clause 8 is widened so as to ap-ly to possess and permits also.

12. Para. 7 of Advocate general's remarks; please see para. 2 above.

13. Para 8 of Advocate General's remarks; It is presumed the the Commissioner of Excise is considering the question of revising the rules suitably.

sd/-
O/c
Remembrancer of Legal Affairs.

U. R. to R. D. No. 290 confl. dated the 27th May 1941.

MGR.

GOVERNOR'S BILL NO. OF 1941.

A Bill to amend the Bombay Abkari Act, 1878.

Whereas it is expedient to amend the Bombay Abkari Act, 1878, for the purposes hereinafter appearing;

Bom. V of 1878

And Whereas the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the government of India Act, 1935, all powers vested by or under the said Act in the Provincial Legislature;

26 Geo. 5, c 2.

Now, therefore, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act:-

Short title.

1. This Act may be called the Bombay Abkari (Amendment) Act, 1941

MMR.

Amendment of Section 4 of Bom. V of 1878

Bom. V of 1878.

2. In section 4 of the Bombay Abkari Act, 1878 (hereinafter called the said Act) for the words "Subject to the control and direction of the Commissioner and the orders of the Provincial Government" the words, figure and letter "Subject to such orders as the Provincial Government or the Commissioner may from time to time make under section 84" shall be substituted.

Amendment of section of Bombay. V of 1878.

3. In section 6 of the said Act, the words "subject to such orders as aforesaid" shall be deleted

Insertion of new section 8A in Bom. V of 1878.

The Commissioner and other Abkari Officers to act subject to orders of Government.

4. After section 8 ofthe said Act, the follwing new section shall be inserted, namely:-

" 8A. Allk Abkari Officers shall exercise the powers and perform the duties conferred andk imposed on them by or under this Act in accordance with such orders as in the case of the Commissioner, the ~~X~~ Provincial Government and in the case of other Abkari Officers, the Provincial Government or the Commissioner, may from time to time make."

Amendment of section 19A of Bom. V of 1878.

5. In section 19A of the said Act the words "Acting under the general or special orders of the Provincial Government" shall be deleted.

Amendment of section 25 of Don. V of 1878.

6. In section 25 of the said Act, the words "acting under the general orders of the Provincial Government" shall be deleted.

Insertion of new section 60A in Bom.V of 1879.

Revision.

7. After section 60 of the said Act, the following new section shall be inserted, namely:-

" 60A. The Provincial Government may call for and examine the record of any proceedings before any Abkari Officer for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in and as to the regularity of such proceedings, and may either annul, reverse, modify or confirm such order or pass such other order as it may deem fit."

Insertion of new section 64A in Ord. V of 1870.

Power of Provincial Government to issue orders in all matters pertaining to licenses.

9. After section 64 of the said Act, the following new section shall be inserted, namely:-

"64A. Notwithstanding anything contained in this Act or the rules made thereunder, it shall be lawful and shall be deemed always to have been lawful, for the Provincial Government, by ~~ex~~ general or special order, to.

(a) prohibit the grant of any kind of licenses throughout the province or in any area;

(b) prescribe the maximum number of licenses of any kind which may be granted in any area;

(c) prescribe the number of shops at which any intoxicant specified in such order or hemp may be sold in any area, the places where such shops may be situated, the days and hours during which such shops may or may not be kept open, the number of such shops in respect of which licenses for sale may be granted and the number of such shops which may be managed by the Excise Department;

(d) direct that no license of the kind specified in such order shall be granted without the previous approval of Government;

(e) prescribe the maximum quantity of any intoxicant or hemp which may be sold in my shop;

(f) prescribe the maximum number of toddy-~~yielding~~ producing trees for tapping which a license may be granted under section 14;

(g) prescribe the procedure to be followed before granting any license;

2(h) direct that before granting licenses auctions may be held, tenders called for or offers received and that licenses shall be granted to persons whose bids, tenders or offers are accepted by the collector;

(i) specify the persons or class of persons to whom licenses may or may not be granted, and in cases in which auctions are held under clause(h) the persons or classes of persons who may or may not be permitted to offer bids insuch auctions;

(j) direct that licenses shall be granted to such persons as may be specified insuch order; and.

(k) issued such other instructions in any matter pertaining to the grant or otherwise of licenses under this Act as the Provincial Government may deem proper.

Explanation.- In this section the word "shop" means any place where any intoxicant or hemp is sold."

Savings.

9. Nothing in this Act shall affect any suit or proceeding instituted prior to the date of the coming into force of this Act.

Office of the R. L. A.

A revised draft Bill is sent herewith.

2. As licenses are ordinarily issued for sale of intoxicants, the words, "or pass" in sections 16(1) and 18-A of the Act have been deleted by caluse 5 of the Bill. In this connection attention is invited to clauses (d) and (e) of sub-section (2) of section 35.

3. A new clause 10 has been added in order to make it clear that the amendments made in the Bombay Abkari Act By Bom. VI of 1940 and by the present amending Bill shall also apply to dangerous drugs.

4. The amendment suggested by the Commissioner of Excise (at page 240 in R. D. file 5788/39) in sub-clause (k) of clause 9 (original clause 8) is not appropriate. To achieve the object in view, a new clause will have to be added empowering overnment to issue instructions to Abkari Officers in regard to permi and passes. It does not however appear that any such provision is neeessary. Under new section 8A, proposed to be inserted by clause 4 of the Bill, Government would have power to issue necessary instructions in regard to these matters. Moreover if a separate clause as regards permits or passes is inserted in the Bill, then as permits and passes are issued for possession and transport of intoxicants(see sections 14B and 12), it will be necessary to insert a further provision as regards permits and passes required for possession or transport which is incidental to import of export across the customs frontier. For these reason which have been explained to A(F) personally, no provision has been made in the Bill as regards permits and passes.

5. A revised note explaining why the proposed legislation is necessary is sent herewith.

sd/-

p. t. o.

sd/-
20/6
o/c
Remembrancer of Legal Affairs.

U. R. to R. D. No. 55 p. confl. dated the 20th June 1941.

Office of the R. L. A.

Seen and returned. A revised draft of the Bill to amend the Abkari Act was returned to the Revenue Department with R. L. A.'s opinion No. 55- P Confl, dated 20th June 1941. The New section 64-A proposed to be inserted by clause 9 of the revised draft bill would meet the requirements of the case so far as the question of Collector's power to refuse all licenses for tapping toddy trees is concerned.

2. As regards the question of the duty levied by Government in respect of toddy producing trees, attention is invited to the remarks made in parar. 4 of R. L. A.'s opinion No. 165-Confl. dated 1st April 1941 and in paras. 5 and 6 of advocate General's opinion dated 6th April 1941, in which it has been Held that the levy of the duty at the present high rates is legally justified. It would, however, be desirable to amend the Abkari Act as soon as possible in the manner suggested in the draft Bill referred to above. In the meantime, the Solicitors may be informed that the question is under the consideration of Government.

o/c

sd/-
30/6

Remembrancer of Legal Affairs.

U. R. No R. D. No. 71-A dated the 1st July 1941.

MRR.

Office of the R. L. A.

A statement, giving the objects and reasons of the proposed Act and which may be published along with the Act, is sent hereiwth. It may be pointed that it is for R D as the administrative department and not for R. L. A. to prepare such a statement, (see also Instruction 25(2/ of the Instructions regarding the Business of Government issued under rules made under section 59 of the Government of India Act.)

2. R. D. is requested to forward the papers to this Department with 20 copies of the Bill, 4 printed on bluish paper and 16 printed on white paper, with the statement attached to it as required by the Secretary to the Governor's Memorandum No. 201(12 dated 4th August 1941, for obtaining the assent of the Governor General.

3. A draft notification extending the Act to the partially excluded areas is appended.

sd/-

O/c.
Remembrancer of Legal Affairs.

R. R. to R. D. Para No. 144-p-confl. dated 8th August, 1941

NOTIFICATION.

Revenue Department.

Bombay Castle, August 1941.

No. In exercise of the powers conferred by sub-section(1) of section 92 of the Government of India Act, 1935, the Governor Of Bombay is hereby pleased to direct that the Bombay Abkari (Second Amendment) Act, 1941 (Bom. of 1941), shall apply to the partially excluded areas in the Province of Bombay.

By order of the Governor of Bombay.

.Secretary to Government.

Act.
Publication of the Bombay Abkari.
(Second Amendment) Act, 1941.

GOVERNMENT OF BOMBAY
Legal Department.
Resolution No. 9130.

Bombay Castle, 22nd October, 1941.

Letter to the Secretary to the Governor, No. 168-p-Confl., dated the 23rd August 1941.
Letter from the Secretary to the Governor, No. 201 (36) dated the 18th October 1941.

* With reference to your letter No. 168-p-Confl., dated the 23rd August 1941 on the above subject, I am directed to forward herewith the copy of the Bill to amend the Bombay Abkari Act, 1878, with His Excellency the Governor General's assent signified thereon.*

RESOLUTION:- The law should be published as Bombay Act No. XV of 1941, in the Bombay Government Gazette, dated the 22nd October, 1941.

2. The Act should be translated into Marathi, Gujerati, Kannada and Hindustani (in Urdu and Devanangari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department.

By order of the Governor of Bombay,

sd/- P. H. Moos,
For Secretary to Government.

To

The Manager, Government Central Press, Bombay, (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department)

The Revenue Department,
The Oriental Translator to Government, Bombay,
The Secretary to the Bombay Legislative Council
The Secretary to the Bombay Legislative Assembly
* with 5 extra copies.

with a copy of the Act.

MRR.
11/4/56.

SM 28/5

BHS 28/5.